

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

76-2109

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
RAYMOND GILLIARD, FRANCIS BLOETH and :
JOHN SUGGS, :

Plaintiffs-Appellees, :

-against- :

RUSSELL OSWALD, Commissioner of Correc- :
tional Services, J. EDWIN LaVALLEE, Super- :
intendent of Clinton Correctional Facility, :

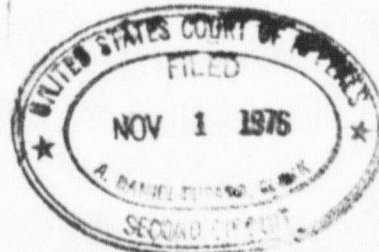
Defendants-Appellants. :
-----X

APPENDIX FOR DEFENDANTS-APPELLANTS

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State of New York
Attorney for Defendants-Appellants
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Deputy Assistant Attorney General
of Counsel



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BEST COPY AVAILABLE

Raymond Gilliard, et al vs. Russell C. Oswald, et al

PROCEEDINGS		Date Order Judgment No
5/22	(1) Filed complaint	
5/22	Issued summons, original-2 copies & del vd to Marshal for service	
5/22	Papers forwarded to Judge Port	
JUNE 5	(2) Filed summons served 5/24/73 on Edwin LaVallee through Rodney Moody, Chief Clerk	
JUNE 8	(3) " summons served 6/5/73 on Russell Oswald through Helen Davis, Sec.	
14	(4) " application to proceed in forma pauperis, and Order (6/13/73) granting application to extent of directing all process and writs be served by Marshal without payment of fees by plaintiffs without prejudice to a further application if circumstances make it necessary - SO ORDERED-HON. E. L. GORT, USDJ	
" 20	(5) Filed answer	
Nov. 1	(6) " Request for production of documents under FRCP 34	
Jan. 24	(7) " Reply to request for production of documents	
" 25	(8) " Notice of Motion returnable Feb. 11, 1974 at Syracuse, and Affidavit in support of Motion for order compelling inspection of documents	
" 25	(9) Filed affirmation of service of Notice of Motion	
Feb. 11	Motion pursuant to R37 FRCP. Adjourned to March 1st.	
Mar. 1	Motion pursuant to R37 FRCP. Off-adjourned to March 11 at Syracuse	
" 4	(10) Filed further reply to request for production of documents under FRCP 34	
" 11	Motion pursuant to R37 FRCP - withdrawn	
" 13	(11) Filed plaintiffs' Note of Issue - May 1974 - Auburn - Court	
Oct. 29	(12) " Note of Issue - January 1975 - Utica - Court	
1975		
April 2	(13) " copy of Writ of HC ad Testificandum for Raymond Gilliard-Writ Issued	
" 2	(14) " " " " " " " " John Suggs	
" 2	(15) " " " " " " " " Francis Bloeth	
" 7	(16) " Marshal's return re service of Writ of HC for Raymond Gilliard	
" 7	(17) " Defendants' Pre-trial Memorandum of Law	
" 7	TRIAL. Amendment of pleadings all titles to read Oswald. Witnesses for plaintiff	
" 9	(18) Filed Marshal's return re execution of writ for Francis Bloeth	
" 11	(19) " " return re execution of writ for John Suggs	
" 14	(20) " " " " " " " " Raymond Gilliard	
April 17	(21) Filed Marshal's Return of Writ served 4/4/75 on Warden, Eastern Correctional Facility, through Virginia Hartley, Head Clerk	
Apr. 8	Trial continued. Witnesses for Defendant. Parties to exchange briefs after receipt of transcript. Response 10 days after serve. Parties to submit findings of fact, etc.	
July 24	(22) Filed transcript of hearing held April 7, 1975 at Auburn before Judge Port	
Aug. 20	(23) Filed Order for Extension of Time to file briefs	
Aug. 28	(24) Filed confirmation of extension of time to file briefs	
Aug. 29	(25) Filed Extension of time to file post-trial briefs to September 8	
Sept. 5	(26) Filed Defendant's post-trial memorandum of law	
" 5	(27) Filed envelope containing Defendants exhibits A thru K inclusive	
Sept. 17	(28) Filed extension of time to file post-trial brief from 9/8/75 to 9/18/75	
Sept. 22	(29) Filed extension of time to file post-trial brief from 9/18/75 to 9/25/75	
Sept. 29	(30) Filed Plaintiffs' Post-Trial Memorandum, Proposed Findings of Fact and Conclusions of Law	
Sept. 29	(31) Filed Deposition of Edwin LaVallee	
1976		
July 27	(32) Filed Memorandum-Decision and Order of Judge Port and Judgment (7/27/76) in favor of plaintiff Gilliard and against defendants in the sum of \$715.00, in favor of plaintiff Bloeth and against defendants in the sum of \$748.25 and in favor of the plaintiff Suggs and against defendants	

Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

RAYMOND GILLIARD, FRANCIS BLOETH and
JOHN SUGGS,

Plaintiffs

Against-

73-CV-249

RUSSELL G. OSWALD, Commissioner of
Correctional Services and J. EDWIN
LaVALLEE, Superintendent of Clinton
Correctional Facility,

Defendants.

APPEARANCES:

WILLIAM E. TELLERSTEIN
WARREN H. RICHMOND, III
DAVID A. FIDLANDER
Attorneys for Plaintiffs
Prisoners' Rights Project
15 Park Row - 19th Floor
New York, New York 10038
(212) 577-3530

HONORABLE LOUIS J. LEFKOWITZ
Attorney General
State of New York
The Capitol
Albany, New York 12224
Attorney for Defendants

TIMOTHY F. O'BRIEN
Assistant Attorney General
Of Counsel

EDMUND PORT, Judge

MEMORANDUM-DECISION AND ORDER

In this case tried to the court, the plaintiffs, inmates of Clinton Correctional Facility, seek damages for their alleged unconstitutional confinement in special housing units and segregation. The damages alleged in this action, instituted on behalf of the plaintiffs by the Legal Aid Society Prisoners' Rights Project, in contrast to the usual complaint having astronomical ad damnum clauses; see, e.g., Ray v. Rockefeller, 352 F.Supp. 750 (N.D.N.Y. 1973), are

refreshingly realistic. The complaint seeks \$850.00 compensatory damages for plaintiffs Bloeth and Suggs and \$825.00 for plaintiff Gilliard. Punitive damages in the sum of \$340.00 for Bloeth and Suggs and \$330.00 for Gilliard are also demanded, in addition to small sums for specified lost wages.

Upon consideration of the evidence and exhibits and the memoranda and arguments of the parties, I conclude that the plaintiffs are entitled to judgment in their favor and find as follows:

1. Prior to February 15, 1973, plaintiffs Gilliard, Bloeth and Suggs were housed in general population areas at the Clinton Correctional Facility.

2. While confined in general population, plaintiffs were permitted, inter alia, to:

a) participate in various institutional educational, vocational, recreational, exercise and religious services and programs;

b) live in cells furnished with sink, bed, toilet, full sized locker, a desk and a chair;

c) possess their personal property;

d) intermingle with other inmates;

e) leave their cells for substantial periods of time each day;

f) eat their meals in the mess hall; and

g) make purchases from the commissary.

3. As a result of a number of assaults upon inmates by other inmates on February 15, 1973, defendant LaVallee ordered that the Clinton Correctional Facility be completely closed down, and that the entire inmate population be locked in their cells. The defendant LaVallee based his authority for such action upon 7 N.Y.C.R.R. § 251.6(f), which reads:

§251.6(f) The provisions of this section shall not be construed so as to prohibit emergency action by the superintendent of the facility and, if necessary for the safety or security of the facility, all inmates or any segment of the inmates in a facility may, on the order of the person in charge of the facility, be confined in their cells or rooms for the duration of any period in which the safety or security of the facility is in jeopardy. In any such case the superintendent shall immediately notify the commissioner.

4. 7 N.Y.C.R.R. § 251.6(d) provides:

If the officer having charge of an inmate or if any superior officer has reasonable grounds to believe that an inmate's behavior in his cell or room is disruptive or will be disruptive of the order and discipline of the housing unit, or is inconsistent with the best interests of the inmate or of the facility, such fact shall be reported to the superintendent and the superintendent may order confinement in a special housing unit. Any such order shall be in accordance with Part 304 of Chapter VI of the rules and regulations of the department.

5. Plaintiffs were not involved in the assaults of February 15, 1973.

6. For the following few days the prison population remained in their cells 24 hours a day while the entire facility was thoroughly searched.

7. As a result of the search, a large volume of weapons and other items of contraband were discovered. However, no weapons or items of contraband were discovered on plaintiffs' persons or in their cells and none were otherwise attributed to them.

8. Plaintiffs, on or about February 23, 1973, were transferred¹ to Housing Block E which had been converted into a special housing unit from a general population area.

9. While confined to special housing unit E, plaintiffs were deprived of most of the privileges and amenities they had been afforded

in general population. They were:

- a) denied participation in any institutional educational, vocational, recreational or religious services or programs;
- b) permitted to possess only limited items of their personal property;
- c) confined to their cells 23 hours a day;
- d) denied contact with inmates in the general population;
- e) permitted only 1 hour a day exercise in a small enclosed yard;
- f) permitted only one 15 minute period per week to both shower and wash their clothes;
- g) made to eat meals in their cells; and
- h) had no opportunity to work or receive wages.

10. At no time were any of the plaintiffs informed of any specific charges against them or why they were the subject of any investigation, and at no time were they given a hearing at which they could challenge their confinement in E-Block. Moreover, plaintiffs were never informed how long they would have to remain in E-Block.

11. On or about March 12, 1973, without explanation, plaintiffs were transferred to Unit 14, the disciplinary housing unit at Clinton Correctional Facility, normally used for the confinement of inmates found guilty of serious violations of institutional rules.

12. While confined to Unit 14, plaintiffs were:

- a) denied participation in any program or activity which would allow them to have visual contact with any other inmate;
- b) confined to cells furnished with only a metal bed, bedding, and a combination toilet and sink;
- c) denied most of their personal property except limited reading and writing material, a shortened toothbrush, toothpaste and clothing;

- d) subjected to strip searches and tear gassings;
- e) permitted only 1 hour a day exercise in a small yard;
- f) had no opportunity to work or receive wages; and
- g) denied commissary privileges.

13. At no time were any of the plaintiffs informed of any specific charges against them or why they were the subject of any investigation and at no time were they given a hearing at which they could challenge their confinement in Unit 14. Moreover, plaintiffs were never informed how long they would have to remain in Unit 14.

14. Plaintiffs remained in Unit 14 until they were transferred out of the Clinton Correctional Facility. Plaintiff Gilliard was transferred out on March 27, 1973 and plaintiffs Bloeth and Suggs on March 28, 1973.

15. The only notice received by the plaintiffs in connection with their confinement in E-Block or Unit 14 was a copy of Plaintiffs' Exhibit 1. A copy of Plaintiffs' Exhibit 1, addressed individually to each of the plaintiffs from the defendant LaVallee, advised each plaintiff that he was being placed in temporary keeplock status with others until such time as the defendant LaVallee determines "that a change in your status should be made". The notice further advised that the action was being taken "pursuant to 251.6(f) of the Rules and Regulations of the Department of Correctional Services."

16. At the time of their initial keeplock, plaintiffs Gilliard and Suggs were unemployed,² and plaintiff Bloeth was receiving a wage of 25 cents a day as a block porter.

17. No continuing state of emergency existed at the Clinton Correctional Facility from February 23, 1973 to late March 1973 which justified plaintiffs' summary confinement in special housing units.

18. Defendant Oswald was informed and personally aware of the confinement of plaintiffs under the above-stated conditions.

✓ 19. Defendants Oswald and LaVallee personally participated in the treatment accorded the plaintiffs herein.

✓ 20. The improper conduct herein was not part of a pattern of such behavior by the defendants or other officials. Further, situations giving rise to the necessity for a wholesale keeplock will only occur, hopefully, very rarely. During such periods of emergency, the action of prison officials should not be unduly restricted. Therefore, the imposition and award of punitive damages herein would not serve a salutary purpose.

CONCLUSIONS OF LAW

1. This court has jurisdiction of the subject matter and the parties hereto. 28 U.S.C. § 1343, 42 U.S.C. § 1983.

2. Plaintiffs' confinement in special housing units on and after February 23, 1973 constituted substantial deprivations and they were thus constitutionally entitled to minimal procedural due process.

3. No emergency situation existed at Clinton during plaintiffs' confinement in special housing units on and after February 23, 1973 which justified defendants' failure to afford plaintiffs said minimal procedural due process.

4. Even assuming an emergency existed at Clinton, 7 N.Y.C.R.R. § 251.6(f) did not justify plaintiffs' transfer from their cells in general population to special housing or their continued confinement therein without minimal due process of any kind. They were not given the reasons for such confinement; they were not charged with any violations; they were not afforded even the most informal opportunity for

any denial of wrongdoing or to request a return to general population with its attendant benefits.

5. The disciplinary action taken against the plaintiffs was in violation of the plaintiffs' rights to due process of the law.

6. The plaintiffs have sustained the allegations alleged in their complaint by a fair preponderance of the credible evidence.

7. The plaintiffs have established facts entitling each plaintiff to damages.

8. Plaintiffs are entitled to recover compensatory damages to redress their unconstitutional confinement in special housing units on and after February 23, 1973.

9. Plaintiffs are not entitled to recover punitive damages.

10. Judgment should be entered in favor of the plaintiffs and against the defendants as follows: in favor of the plaintiff Gilliard in the sum of \$715.00; in favor of the plaintiff Bloeth, \$748.25; and in favor of the plaintiff Suggs, \$740.00.

DISCUSSION

The defendants rely on plaintiffs' Exhibit 1 as giving notice to the plaintiffs of their transfer to special housing. In so doing, defendants misconstrue the section relied upon. Assuming an emergency situation, § 251.6(f) merely requires that § 251.6, setting forth the conditions relating to confinement, should not be construed so as to prohibit emergency action by the superintendent. Subsection (f) permits confinement to a cell (keeplock) for the duration of any emergency "in which the safety or security of the facility is in jeopardy." Although the notice referred to placing the plaintiffs in temporary keeplock, they were, in fact, confined to a special housing unit. Such

confinement is distinguished from the keeplock permitted during an emergency. The keeplock during an emergency is in the inmate's own cell. The confinement in a special housing unit is triggered by reasonable grounds on the part of the prison official "to believe that an inmate's behavior in his cell or room is disruptive or will be disruptive of the order and discipline of the housing unit, or is inconsistent with the best interests of the inmate or of the facility". . § 251.6(d) < No facts supportive of such behavior on the part of any of the plaintiffs was shown. In any event, the transfer to special housing from general housing pursuant to § 251.6(d) "shall be in accordance with Part 304 of Chapter VI of the rules and regulations of the department", which "[insure] that [plaintiffs'] due process rights would be protected through utilization of procedures prescribed by written Rules that had been published and put into effect by the Department of Correctional Services." U.S. ex rel Walker v. Mancusi, 467 F.2d 51, 52-53 (2 Cir. 1972).

Such procedures were not employed; nor were any other minimal due process procedures.

Reliance on subdivision (f) is further misplaced under the facts herein because, charitably treating the plaintiffs' confinement during the period subsequent to February 23 as keeplock, it extended beyond the period permitted by that subdivision.

JUDGMENT

For the reasons herein, it is

ORDERED, that judgment be entered in favor of the plaintiffs and against the defendants as follows: in favor of the plaintiff Gilliard

in the sum of \$715.00; in favor of the plaintiff Bloeth in the sum of \$748.25; and in favor of the plaintiff Suggs in the sum of \$740.00.

Senior United States District Judge

Dated: July 22, 1976
Auburn, New York

FOOTNOTES

¹ Mr. Suggs, who was already in E-Block at that time, testified that once it was declared a special housing unit, many inmates were transferred out and the conditions became substantially more restrictive. (Tr. 49-50).

² Although unemployed, they were receiving unemployed pay of 20 cents a day. Page 4 of letter from Lt. G. Hoy to W. Gard, dated June 8, 1973, contained in defendants' reply dated January 23, 1974 to plaintiffs' request for production of documents.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

U. S. DISTRICT COURT
N. D. OF N. Y.
FILED

MAY 22 1973

Copy

----- x
RAYMOND GILLIARD, FRANCIS BLOETH,
and JOHN SUGGS,

Plaintiffs,

v.

RUSSELL G. OSWALD, Commissioner
of Correctional Services,
State of New York; and EDWIN
LaVALLEE, Superintendent, Clinton
Correctional Facility,

Defendants.
----- x

AT 6 O'CLOCK
J. R. SCULLY, Clerk
JUTICA

SUMMONS
73-CV- 249
73 CV _____

To the above-named defendants:

You are hereby summoned and required to serve upon
William E. Hellerstein or Robert A. Stolzberg, plaintiffs'
attorneys, whose address is Legal Aid Society, Prisoners'
Rights Project, 119 Fifth Avenue, New York, New York 10003,
an answer to the complaint which is herewith served upon
you, within 20 days after service of this summons upon you,

exclusive of the day of service. If you fail to do so,
judgment by default will be taken against you for the re-
lief requested in the complaint.

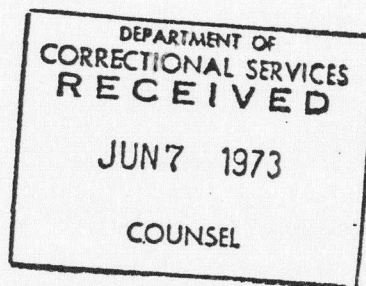
Dated: , New York
, 1973

J. R. SCULLY

James K. Evans

Chief Deputy Clerk

CLERK OF THE COURT



CRIME VICTIMS
COMPENSATION BOARD
JUN 5 12 21 PM '73

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

----- -X

RAYMOND GILLIARD, FRANCIS BLOETH and :
JOHN SUGGS, :

Plaintiffs, :

-against- :

73 CV _____

RUSSELL G. OSWALD, Commissioner of :
Correctional Services, State of New :
York; and EDWIN LA VALLEE, Superinten- :
dent, Clinton Correctional Facility, :

COMPLAINT

Defendants. :

----- -X

JURISDICTION

1. This is an action brought pursuant to 42 USC §1983 and 28 USC §1343, seeking damages for the denial of due process of law and equal protection of law which occurred when defendants, acting under color of state law, placed plaintiffs in segregation without the constitutionally required procedures.

PARTIES

2. Plaintiffs are all currently inmates at the Adirondack Correctional Treatment and Evaluation Center, Dannemora New York, serving sentences of imprisonment imposed by New York State courts. They were inmates of the Clinton Correctional Facility, Dannemora, New York, at all times referred to in this complaint.

3. Defendant Russell G. Oswald is the Commissioner of Correctional Services of the State of New York. He is the chief executive officer of the Department, and is ultimately responsible for all discipline and security within the system. Under the state regulations, he is responsible for

reviewing any action taken under the emergency powers delegated by him to defendant LaVallee.

4. Defendant Edwin LaVallee is the Superintendent of the Clinton Correctional Facility. Subject to the authority of the Commissioner, he is the highest executive officer of the facility, and is responsible for all disciplinary and security measures taken.

FIRST CLAIM FOR RELIEF

5. On February 23, 1973, each plaintiff received a notice from defendant LaVallee. This notice (attached as Exhibit A) stated that "as a result of the disturbance on February 15, 1973, I have taken the action of placing you among others in temporary keeplock status." The notice cited "251.6(f) of the Rules and Regulations of the Department of Correctional Services" for the authority to take this action. (See Exhibit B.)

6. Plaintiffs were never informed by defendants of the nature of the alleged incident of February 15. Plaintiffs deny having been involved in any incident which could justify their subsequent segregation.

7. Pursuant to this notice, each plaintiff was kept in keeplock from February 23, (and later put in Unit 14, the segregation unit of the facility) until they were transferred out of the institution. Plaintiffs Bloeth and Suggs were transferred on March 28; plaintiff Gilliard on March 27, 1973.

8. None of the plaintiffs was given any further explanation of the reason he was being segregated, nor were they accorded any hearing or other opportunity to contest the determination.

9. By being placed in keeplock or segregation, petitioners were subjected to the same conditions imposed as punishment on inmates who had been convicted of serious infractions of prison rules. They suffered substantial deprivations. They were locked into their small cells for most of the day. Their access to food, recreation, reading material, commissary, and educational opportunities was restricted. They were not allowed to work in institution jobs, and therefore could not earn the dollar per day which inmates may earn. They have been restricted in their social intercourse with their peers. They were subjected to frequent and humiliating strip searches not required for the general population. And they have been branded as troublemakers, which can exacerbate their relations with correctional officers and administrators, and adversely affect their chances of release on parole.

10. 7 NYCRR §251.6(f) can only be invoked "for the duration of any period in which the safety or security of the facility is in jeopardy." On information and belief, there was no such emergency at Clinton Correctional Facility on February 23, 1973, or thereafter, which could justify the invocation of this section.

11. Except in extraordinary circumstances not present here, the Due Process and Equal Protection Clauses of the United States Constitution prohibit the imposition of punishment or the denial of privileges without a hearing at which a rational determination of the facts, based upon advance notice of the charges and an opportunity to explain, can be made. These requirements were not met here.

WHEREFORE, plaintiffs pray that this Court

(a) Enter judgment against defendants jointly and severally for the sum of \$850.00 for Plaintiffs Bloeth and Suggs and \$825.00 for Plaintiff Gilliard for compensatory damages, consisting of \$25.00 a day for each day of unconstitutional confinement;

(b) Enter judgment against defendants jointly and severally for the sum of \$340.00 for Plaintiffs Bloeth and Suggs and \$330.00 for Plaintiff Gilliard for punitive damages consisting of \$10.00 per day for each day of unconstitutional confinement;

(c) Enter judgment against defendants jointly and severally for the sum of \$34.00 for Plaintiffs Bloeth and Suggs, and \$33.00 for Plaintiff Gilliard for compensatory damages for lost wages;

(d) Award plaintiffs the costs and disbursements of this action; and

(e) Grant such other and further relief as the Court may deem just and equitable.

Yours, etc.,

WILLIAM E. HELLERSTEIN
ROBERT A. STOLZBERG
Legal Aid Society
Prisoners' Rights Project
119 Fifth Avenue
New York, New York 10003
212 - 677 - 4224

April 27, 1973.

EXHIBIT A

STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES
CLINTON CORRECTIONAL FACILITY
Dannemora, New York 12929

Date: February 23, 1973

From: Superintendent LaVallee

To: #45968 SUGGS, J. E-7/7

RE: Temporary Keeplock Status.

This is to notify you that as a result of the disturbance on February 15, 1973, I have taken the action of placing you among others in temporary keeplock status.

This action is taken pursuant to 251.6 (f) of the Rules and Regulations of the Department of Correctional Services.

I regret but find it necessary to take this action for the safety and security of you, and the institution. I have ordered that your case be reviewed with deliberate speed, and a final disposition of your status will be made as soon as possible. However, until such time that I determine that a change in your status should be made you will remain in keeplock status.



Superintendent

EXHIBIT B

7 N.Y.C.C.R. §251.6(f): "The provisions of this section shall not be construed so as to prohibit emergency action by the superintendent of the facility and, if necessary for the safety or security of the facility, all inmates or any segment of the inmates in a facility may, on the order of the person in charge of the facility, be confined in their cells or rooms for the duration of any period in which the safety or security of the facility is in jeopardy. In any such case the superintendent shall immediately notify the commissioner."

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

RAYMOND GILLIARD, FRANCIS BLOETH,
and JOHN SUGGS,

Plaintiffs,

-against-

ANSWER

RUSSELL G. OSWALD, Commissioner of
Correctional Services, State of New
York; and EDWIN LaVALLEE, Superin-
tendent, Clinton Correctional
Facility,

Civil Action File
No. 73 CV 249

Defendants.

Defendants, by their attorney, Louis J. Lefkowitz,
Attorney General of the State of New York, as and for an
answer to the complaint herein, allege as follows:

FIRST: Admit the allegations set forth in
paragraphs 5 and 7.

SECOND: Admit the allegations set forth in
paragraph 2 but deny that John Suggs is currently an inmate
at the Adirondack Correctional Treatment and Evaluation
Center, having been transferred from such facility to Auburn
Correctional Facility on May 15, 1973.

THIRD: Deny the allegations of paragraph 3 except that defendants admit that Russell G. Oswald is the Commissioner of Correctional Services of the State of New York.

FOURTH: Deny the allegations of paragraph 4 except that defendants admit that J. Edwin LaVallee is the Superintendent of Clinton Correctional Facility.

FIFTH: Deny the allegations set forth in paragraphs designated 1, 6, 8, 9, 10 and 11.

AS AND FOR A FIRST AND COMPLETE
DEFENSE, DEFENDANTS ALLEGE:

SIXTH: That the complaint herein fails to state a
claim sufficient to establish the jurisdiction of this
Court over the subject matter.

AS AND FOR A SECOND AND COMPLETE
DEFENSE, DEFENDANTS ALLEGE:

SEVENTH: That the complaint herein fails to state
any claim upon which relief may be granted.

WHEREFORE, defendants respectfully pray for judgment
dismissing the complaint.

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants
The Capitol
Albany, NY 12224

By s/ Timothy F. O'Brien

TIMOTHY F. O'BRIEN
Assistant Attorney General

Dated: June 19, 1973

ANNOUNCEMENT BY J. E. LAVALLEE, SUPT. ON INST. RADIO FEB 20, 1973

To all the population, this is the Superintendent.

As you know, here we are returning to normal as rapidly as possible. We simply regret that innocent people have been deprived of their holiday weekend in order to search the institution to make it safe for you to move about.

On Wednesday, the 21, we will be as near normal as possible in terms of the search. Most shops and work areas will be open. The yard will operate normally and we will continue our investigation.

Those people who are in keeplock, some of whom we have definite proof beyond question are involved and will remain in keeplock until their case is disposed of. Others who may not be released tomorrow are under investigation because of suspicious information gained by officers, during the search and investigation. These cases will be handled as soon as possible with the result being either action or release. You, like the officials and officers of this facility, need not fear action because you have the power of the State of New York behind you as long as you are right, as long as you stay within the laws and rules and regulations.

You were convicted on your own sentence and are here presumably to do your owntime. If you let someone bulldoze you into getting into serious trouble it is your own fault. We are making every effort to sort out the people who have attempted bulldozing by the use of knives or threats of the use of knives or other weapons, and anyone who allows them to scare them is making a sad mistake.

You have protection of yourself, by yourself and the officers and officials of this facility and by the State of New York.

Our mission, efforts, and purpose is to see that every man here who wants to do his time and take advantage of the opportunity afforded him here has that chance without interference from anyone. Harassment by other inmates should not be tolerated and we are here to try to help you and are anxious to do so, and don't let anyone give you the wrong impression on that score.

This office is open to receive your messages and do whatever is indicated to help you to do your time and learn whatever would be advantageous to you and to get out of here, legally, the earliest possible moment.

attach #1

EXHIBIT "D"

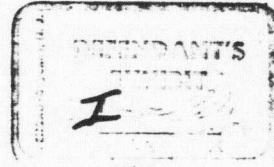
February 22, 1973

Memo:

From: J. E. LaVallee

To: Commissioner Oswald

Re: Recent disturbance at Clinton



This will confirm and elaborate on our many telephone conversations with Commissioner Quick over the last few days.

As you know, several knife assaults occurred at this facility.

As a result, with your permission, this facility was virtually "closed down" on February 15, 1973.

Immediate investigation into the cause of this, the nature and extent of the disturbance and its participants was begun at once.

On Friday morning individual block feeding was begun; however, another disturbance began in B Block and the facility was again closed down, at which time a general search of the entire facility was commenced.

Starting on Monday, programs were gradually resumed and it is anticipated that with some exceptions, normal activity will resume on Thursday.

At my direction, Deputy Gard began a careful screening of the entire population immediately and as a result, when the programs resumed a number of men were continued in close custody (KL) situation and will remain thus until the screening is completed.

As a result of the assaults, contraband found following the frisk, and continuing investigations, a total of 141 inmates remain in KL.

The State Police are investigating specific assaults. Some 94 inmates have been charged with specific misbehavior and these will be processed under Chapter 5 and 6. In addition 47 men remain in KL status with no specific charge, pending completion of the review of each individual case. This action is taken in accordance with the provisions of 251.6(f) of the Rules and Regulations, with full awareness that some of these individuals may be released without disciplinary charges. We, at this time, feel that the retention and classification is necessary for the security and safety of the institution. At this time, all due haste is being taken to dispose of these cases.

Attach #2

EXHIBIT "C"

I ②

- 2 -

Please find attached lists noting the individuals involved in a KL situation:

1. Individuals in KL pending specific misbehavior reports
2. KL pending investigation and screening process

Individuals in KL pending investigation and screening process

2/22/75
T (3)

✓16248 ROYALE, John Joseph
✓15757 GRANT, Sherman
✓17028 TINSLEY, Larry
15308 ERIFFIN, James D.
✓16181 ULMER, Willie
✓15643 MC CULLEN, Charles
15778 GADDY, Tomascene
✓13410 PARKER, Willie
15357 MC DOUGLE, Charles
✓15207 ZIEMBA, Andrew Joseph
16963 GRIMES, Bruce
✓16967 JONES, Wellington Leroy
✓17000 COMACHO, Felix
10068 MOYA, Chico
13563 GILLIARD, Raymond
✓16998 CASERTA, James
✓17727 WILSON, Ted
38084 CHOLMONDELEY, Sylvester
✓12165 BEAUDET, Guy
13373 BLOETH, Francis Henry
15759 JUHL, Alfred Carl
15139 ROBLES, Juan
✓11940 BUTLER, Norman
15889 PRATT, Robert L.
15988 CASTRO, Miguel
✓12967 FREGGANS, Richard J.
✓15989 CENDER, Steven
14104 COUCHIA, James
15949 MAPP, Charles
✓19117 MOCCIA, Carmine
15369 RAY, Essex
10423 CANADY, Nelson Jr.
✓15432 WASHINGTON, Andrew Jr.
16695 WRIGHT, Nathan
✓14670 MARSHALL, Earl
15861 NANCE, Harold
✓15171 COOMAN, John
✓12861 WRIGHT, Alexander
15035 MACKET, Elijah
15009 MONROE, Floyd
15968 SUGGS, John
✓16247 HURLEY, Michael

2/24/75

Individuals in KL pending action on specific misbehavior reports

I ④

L2955 BROWN, Curtis
38644 VOGT BRAUNSHERG, Leonard Edward
L5745 WOODS, James
L5798 EDWARDS, Joseph
L6976 RICH, Henry James
L6534 FOWLER, Jasper
L5781 SCHEIBELIN, Darryl
B5719 ALIAH, God
L6827 DI PAIO, John
L6407 PASHA, Alamin
L5693 LEONARD, Lomanaco
L7008 HOWARD, Clifford
L6415 RAWLS, Rubin
L5313 MAHONEY, Robert Lee
L6765 COTTO, Graciano C.
✓L2038 RICE, Brian Finton
✓L5058 GALE, Charles
L7064 HAKAISKI, Stephen
L4331 BARNES, Alex Stanley
L3037 WELCOME, Eugene
L6571 DE FEO, Joseph
L3269 CARBONARO, Dominic
38760 BROWN, Cecil E.
L6612 CHARLMAN, Louis
L3710 KLEIN, Eugene Jerome Joseph
L6780 GOODMAN, Clifton
L6354 JOHNSON, Ralph
✓L5939 MACK, Arthur
L6563 MANGUM, Allen
L6569 CARPENTER, Kenneth
38004 PISCITELLO, Frank
L5402 SCANELLI, Edward
L6997 BRAITHWAITE, Arthur
✓L6091 HARRIATT, Joseph
L5685 CUJDIK, Dennis
L4412 FERRIN, Donald
L5048 VASQUEZ, William
L5788 BARRON, Thomas
L6828 DRAKESFORD, Ronald
L5698 ROBINSON, Lewis
L5589 DE RCO, William Stedman
L6245 GARNER, Ronald
✓L6220 JOHNSON, John
L3338 MUNCO, Thomas
✓L6672 JOHNSON, James
L6318 HUERTA, Felix
L5062 GILMORE, Howard
L4914 DI CHIARO, Frank
✓L6838 LEWIS, Kenneth
L5313 MERCADO, Ralph
L7003 GIBSON, Chester

CLINTON CORRECTIONAL FACILITY
MINUTES OF EXECUTIVE MEETING

DATE: February 23, 1973

PRESENT: J. E. LaVallee, Superintendent
Patrick Fish, Esq., Counsel, Dept. of Correctional Services
W. Gard, Deputy Superintendent - Security
G. Deyo, Deputy Superintendent - Administration
J. C. Beaubriand, Deputy Superintendent - Programs
W. Donahue, Coordinator - Volunteer Services

In accordance with Section 251.6 (f) of the Rules and Regulations of the Department, we are separating some people for purposes of investigation with a view toward ultimately suggesting an evaluation and treatment area. Upon completion of each individual investigation and evaluation, the men may return to normal procedure or be held according to findings.

Previously men have been assigned to certain areas to prevent idleness. Perhaps a certain amount of feather-bedding has taken place in areas, and feather-bedding is detrimental to security. As a result of investigation, we find that the hospital area, administration building, and carpenter shop, certainly had more inmates than were necessary, to the point where it established a security risk. Therefore, we are reducing the number of men assigned to these areas. This procedure indicates a need to expedite the programs previously discussed relative to new industries, vocational programs, and other educational endeavors, so that we do not increase idleness.

E Block is enjoying the same privileges as the rest of the population, i.e. medical care, visits, bath and barber schedule, yard, and all other normal procedures, except they are separated from the rest of population and are eating their meals in their cells.

As a result of this emergency, an investigation team of staff, including officers and counselors, has been established which will expedite and establish factual information which will govern future procedures.

A contingent of inmates has been dispatched to Attica Correctional Facility and Green Haven Correctional Facility. Six (6) to Attica and three (3) to Green Haven. Trucks are being sent to take the personal property.

The Honor Living Program commenced last night and reports this morning indicate that it was successful. Enclosed are two reports covering the opening.

BEST COPY AVAILABLE





J. E. LAVALLEE
SUPERINTENDENT

STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES
CLINTON CORRECTIONAL FACILITY

DANNEMORA, N. Y. 12929



March 2, 1973

Hon. William C. Quick
Deputy Commissioner
Department of Correctional Services
Albany, New York

Dear Commissioner:

Supplementing previous correspondence, attached²
are lists of inmates who were placed in keep-lock during
our recent incident; the current status of each is indicated.

Very truly yours,

SUPERINTENDENT

JEL/m
Encl

attach #3

Individuals in KL pending investigation and screening process as previously reported: 3-7

46949 ROYALE, John Joseph Trans. to ACTEC - LTC 1 or 2
45767 GRANT, Sherman Trans. to ACF
47028 TINSLEY, Larry Trans. to ACTEC - Stress Prog.
45408 GRIFFIN, James D. Continue in same status 7 days;
pending RX Program. K (N)
36181 ULMER, Willie Trans. to Auburn CF.
45643 MC CULLEN, Charles Trans. to GMCF
46778 GADDY, Tomascene Continue in same status 7 days.
43410 PARKER, Willie Trans. to Auburn CF.
45367 MC DOUGLE, Charles Continue in same status 7 days.
45207 ZIEMBA, Andrew Joseph Trans. to GHCF.
46963 GRIMES, Bruce Trans. to Attica CF
46967 JONES, Wellington Leroy Trans. to GMCF.
47000 COMACHO, Felix Trans. to Auburn CF.
40068 MOYA, Chico Continue in same status 7 days;
pending RX Program.
X 43563 GILLIARD, Raymond Continue in same status;
pending RX Program.
46998 CASERTA, James Trans. to GHCF.
37727 WILSON, Ted. Transferred to ACTEC - Comm. Prep.
38084 CHOLMONDELEY, Sylvester Continue in same status; pending
RX Program)
42165 BEAUDET, Guy Transferred to Attica CF.
X 43373 BLOETH, Francis Henry Continue in same status; pending
RX Program.
45959 JUHL, Alfred Carl Continue in same status. 7 days.
46139 ROBLES, Juan Trans. to Attica CF.
41940 BUTLER, Norman Trans. to Attica CF.
45889 PRATT, Robert L. Continue in same status 7 days
45988 CASTRO, Miguel Continue in same status 7 days
42967 FREGGANS, Richard J. Transferred to GHCF.
45989 CENDER, Steven Transferred to Auburn CF.
44104 COCCHIA, James Continue in same status 7 days.
45949 MAPP, Charles Transferred to Attica CF.
39117 MOCCIA, Carmine Transferred to Auburn CF.
45369 RAY, Essex. Continue in same status 7 days;
pending RX Program.
40423 CANADY, Nelson, Jr. Continue in same status. (Was removed
from transfer list because of open date).
45432 WASHINGTON, Andrew Jr. Transferred to Attica CF.
46695 WRIGHT, Nathan Continue in same status 7 days.
44670 MARSHALL, Earl Transferred to ACTEC - Comm. Prep.
45861 NANCE, Harold Continue in same status 7 days.
45171 COONAN, John Specific report added = 7 days KL and
recall. Delete from this list.

42861 WRIGHT, Alexander
45035 MACKEY, Elijah
46009 MONROE, Floyd
X 45968 SUGGS, John

46247 HURLEY, Michael
46612 CHARLMAN, Louis

Transferred to GHCF.
Continue in same status 7 days.
Transferred to GMCF.
Continue in same status. Pending RX
Program.
Transferred to GMCF.
From specific list. Continue in same
status 7 days.

NAMES ADDED:

46697 HICKS, Benjamin
45063 OWENS, Raymond
46461 CLARK, Herman
45986 BULLOCK, John
45506 BATTLE, Clifford
46263 SLAUGHTER, Henry
43894 PAULEY, Edward
46638 RANSOM, John

Continue in same status 7 days.
Continue in same status 7 days.
Continue in same status 7 days.
Continue in same status 7 days.
Continue in same status 7 days.
Continue in same status 7 days.
Continue in same status 7 days.
Continue in same status 7 days.

45713 BERTOLI, Gerard

Continue in same status concurrently
with Adjustment Committee disposition
on unrelated specific report on which
the latest action was 7 days RL and
recall 3-6-73.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

RAYMOND GILLIARD, FRANCIS BLOETH AND
JOHN SUGGS,

Plaintiffs,

-against-

NOTICE OF APPEAL

RUSSELL G. OSWALD, Commissioner of
Correctional Services and J. EDWIN
LA VALLEE, Superintendent of Clinton
Correctional Facility,

73 CV 249

Defendants.

S I R:

PLEASE TAKE NOTICE that the above-named defendants hereby
appeal to the United States Court of Appeals for the Second
Circuit from the final judgment entered in this action on the
27th day of July, 1976.

Dated: August 18, 1976

Yours, etc.

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants
The Capitol
Albany, NY 12224

By s/ Timothy F. O'Brien

TO: HON. JR. SCULLY, CLERK
United States District
Court for the Northern
District of New York
Federal Building
Utica, NY 13503

TIMOTHY F. O'BRIEN
Assistant Attorney General

WILLIAM E. HELLERSTEIN, ESQ.
Prisoners' Rights Project
15 Park Row - 19th Floor
New York, NY 10038

P 39.

STATE OF NEW YORK)

: SS.:

COUNTY OF NEW YORK)

JOAN P SCARNE II

being duly sworn, deposes and says that She is employed in the office of the Attorney General of the State of New York, attorney for Defendant-appellant herein. On the 1 day of Nov, 1976, She served the annexed upon the following named person :

Mr David Englander Esq
Prisoners Rights Project
15 Park Lane 19th Floor
NY 10038

Attorney in the within entitled appeal by depositing a true and correct copy thereof, properly enclosed in a post-paid wrapper, in a post-office box regularly maintained by the Government of the United States at Two World Trade Center, New York, New York 10047, directed to said Attorney at the address within the State designated by me for that purpose.

Joan P Scarnell

Sworn to before me this

1 day of Nov, 1976

David L. Burt

Assistant Attorney General
of the State of New York